

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 524

Case No. 86-23

March 16, 1987

(Enforcement of Conditions in Orders - Text)

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 5, 1987, to consider proposed amendments to Title 11, DCMR, regarding compliance with, and the enforcement of, conditions in orders of the Zoning Commission and Board of Zoning Adjustment. The public hearing was conducted as a rulemaking proceeding.

Upon consideration of the record herein, the Commission concludes that the proposed amendments should be adopted. As set forth in the memorandum dated September 23, 1986, from the Zoning Administrator to the Acting Executive Director of the Zoning Secretariat, and in the memorandum dated October 31, 1986, from the Acting Executive Director to the Zoning Commission, the amendments would resolve a potential administrative problem that is of particular importance because of the adoption and implementation of the Civil Infractions Act, D.C. Law 6-42. That is, when either the Zoning Commission or the Board of Zoning Adjustment has approved an application conditionally, the practice of each has generally been to provide in the order of approval, in such cases, that the successful applicant must satisfy the conditions before being issued a certificate of occupancy or a building permit. However, if the applicant or a successor to the applicant's rights later violates any condition, the practical course for enforcement would often be to seek compliance with the conditions, rather than revocation of the building permit or certificate of occupancy. For that reason, it is essential that Title 11 clearly provide that owners and occupiers of land and improvements to land are required at all times to comply with any condition which the Commission or Board of Zoning Adjustment has imposed to the issuance of a building permit or certificate of occupancy, or to the approval of a variance, special exception, or planned unit development.

During the Commission's consideration of the amendment, the issue was raised whether the proposed amendments would clearly operate after their adoption to require compliance with conditions in covenants and orders which were entered

before the adoption of the amendments. The Commission is persuaded that the amendments would require such compliance. On the rule's face, the rule would require compliance at all times if the circumstances set forth in 11 DCMR 3204.1 apply. Subsection 3204.1 does not provide different treatment for Board or Commission orders issued before the date of final action in this case.

Another question which was raised was whether the rule should explicitly state that it provides for the enforcement only of conditions which the Commission or Board explicitly sets forth as such, and of covenants which the Commission or Board explicitly requires to be recorded. The Commission has concluded that such a provision is not necessary. A particular act becomes a condition to an approval only if it is explicitly set forth as such a condition. It is not enough that a proposed act may be part of the record in the case, or may even be referred to in the findings of fact.

By letter dated February 6, 1987, the National Capital Planning Commission reported its finding that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding the enforcement of conditions in orders of the Zoning Commission and Board of Zoning Adjustment. The specific amendments are to add a new Section 3204, to read as follows:

3204 COMPLIANCE WITH CONDITIONS IN ORDERS

3204.1 The provisions of this section shall apply when a building permit or certificate of occupancy has been issued under the authority of an order of the Board of Zoning Adjustment or the Zoning Commission for the District of Columbia, and the order of the Board or Commission sets forth any condition to the issuance of the building permit or certificate of occupancy, or to the approval of a variance, special exception, or planned unit development.

3204.2 If the order of the Board of Zoning Adjustment or

Zoning Commission conditions the issuance of a building permit or certificate of occupancy upon the recordation of a covenant, then, for purposes of subsections 3204.4 and 3204.5 of this section, each term and condition in the covenant shall be treated as a condition to the issuance of the building permit or the certificate of occupancy.

- 3204.3 If a building permit or certificate of occupancy has been issued under the authority of a decision of the Board of Zoning Adjustment to approve a special exception or variance, then, for purposes of subsections 3204.4 and 3204.5 of this section, each condition to the approval of the special exception or variance shall be treated as a condition to the issuance of the building permit or certificate of occupancy.
- 3204.4 Any person who owns, controls, occupies, maintains, or uses any building, structure, or land or any part of any building, structure, or land shall at all times comply with any condition to the issuance of the certificate of occupancy for the building, structure, or land, or part thereof.
- 3204.5 Any person who erects, constructs, reconstructs, alters, converts, owns, controls, occupies, maintains, or uses any building, structure, or any part of any building or structure shall at all times comply with any condition to the issuance of the building permit for the building, structure, or part thereof.

Vote of the Zoning Commission at the conclusion of the public hearing on January 5, 1987: 5-0 (John G. Parsons, George M. White, Maybelle T. Bennett, and Lindsley Williams to approve, and Patricia N. Mathews, to approve by proxy).

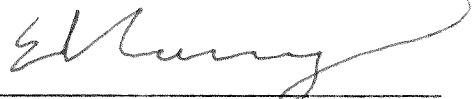
This order was adopted by the Zoning Commission at the special public meeting on March 16, 1987, by a vote of 4-0 (Patricia N. Mathews, John G. Parsons, Maybelle T. Bennett, and Lindsley Williams, to adopt - George M. White, not present, not voting).

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In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, specifically on 24 APR 1987.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Acting Executive Director
Zoning Secretariat

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